

OPINION
48-232

May 3, 1948 (OPINION)

TAX SALES

RE: Separate Sales for General and Hail Tax

Re: Sections 26-2241 and 26-2242 and 57-2411

Your letter of April 28, re above, has been received and sent to my desk.

There is a direct conflict which we have noted before between section 26-2241 and section 57-2411. It is impossible for us to guess what the Supreme Court would say if the question is ever raised as to which section shall govern.

It is our opinion, however, that for the present you should follow the provisions of sections 26-2241 and 26-2242 in your tax sales.

If you will refer to the case of State ex rel. Olsness v. McCarthy, 53 N.D. 609, 207 N.W. 436, you will find that the court held, that under the laws then in force, which was the original hail tax act as amended up to the time of that case, both general and hail taxes should be lumped together and the property sold in one sum.

I also call your attention to the case of Trustee Loan Company v. Botz, 37 N.D. 230, 164 N.W. 14, where our court held that a tax sale which included the general tax and special assessments in one sum was void and unconstitutional under section 22 of the Constitution. It would seem that if the matter ever was tested that our court would have follow the rule in the Botz case, since neither special assessments nor hail tax levies are in fact taxes.

NELS G. JOHNSON

Attorney General